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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Charles Baird et al.,

Plaintiffs,

v.

BlackRock Institutional Trust Company,
N.A., et al.,

Defendants.

Case No: 4:17-cv-01892-HSG

**CORRECTED STIPULATION AND
~~PROPOSED~~ ORDER TO MODIFY THE
CASE SCHEDULE**

Pursuant to Northern District of California Local Rule 6-2, Plaintiffs Charles Baird and Lauren Slayton (collectively, "Plaintiffs"), Defendant Mercer Investment Consulting ("Mercer"), and Defendants BlackRock Institutional Trust Company, N.A., Blackrock, Inc., the BlackRock, Inc. Retirement Committee, the Investment Committee of the Retirement Committee, the Administrative Committee of the Retirement Committee, the Management Development & Compensation Committee, Anne Ackerley, Catherine Bolz, Chip Castille, Marc Comerchero, Paige Dickow, Daniel A. Dunay, Any Engel, Nancy Everett, Joseph Feliciani, Jr., Michael Fredericks, Corin Frost, Daniel Gamba, Kevin Holt, Chris Jones, Milan Lint, Philippe Matsumoto, Katherine Nedl, John Perlowski,

1 Ann Marie Petach, Andy Phillips, Kurt Schansinger, Tom Skrobe, Jeffrey A. Smith, Joel Davies,
2 John Davis, and Laraine McKinnon (“collectively, “BlackRock”), by and through respective
3 counsel, hereby stipulate and agree as follows:

4 **The Current Case Schedule**

5 WHEREAS, on June 18, 2018, the Court entered a stipulated order modifying the case
6 schedule by setting, among other dates, the close of fact discovery on September 21, 2018; the close
7 of expert discovery on class issues on December 21, 2018; and the completion of briefing on the
8 plaintiffs’ motion for class certification on March 14, 2019, ECF No. 122;

9 WHEREAS, on August 27, 2018, with leave of Court, Plaintiffs filed a Second Amended
10 Class Action Complaint, naming additional defendants, including Mercer, ECF No. 154;

11 WHEREAS, on September 17, 2018, Plaintiffs, Mercer, and BlackRock (collectively, the
12 “Parties”) filed a stipulation seeking to modify the case schedule, ECF No. 161;

13 WHEREAS, after holding a telephonic conference on September 25, 2018, the Court granted
14 in part the Parties’ proposed modifications to the case schedule, setting, among other dates, the close
15 of fact discovery on December 21, 2018; the close of expert discovery on class certification issues
16 on February 28, 2019; and the completion of briefing on Plaintiffs’ class certification motion on May
17 14, 2019, ECF No. 173;

18 **Progress of Discovery Between Plaintiffs and BlackRock**

19 WHEREAS, Plaintiffs and the BlackRock Defendants have diligently pursued discovery in
20 this case for over a year, including by exchanging and responding to numerous requests for
21 production (“RFPs”), interrogatories, and requests for admission, and by taking the depositions of
22 nine fact witnesses, Russell Decl. ¶ 3¹;

23 WHEREAS, BlackRock has represented that, by December 21, 2018, it will have completed
24 the production of all responsive documents, *id.* ¶ 5;

25 WHEREAS, Plaintiffs and BlackRock shortly will have two joint discovery letters pending
26 before Magistrate Judge Westmore regarding, respectively, BlackRock’s Rule 30(b)(6) deposition

27
28 ¹ A declaration from Matthew A. Russell setting forth the reasons for the Parties’ request is attached
hereto as Exhibit A.

1 testimony (ECF No. 197-3) and the scope of appropriate discovery in response to Plaintiffs' RFP
2 Nos. 34 and 35 (to be filed this week), Russell Decl. ¶ 4;

3 WHEREAS, an extension of the fact discovery period will allow time for Magistrate Judge
4 Westmore to decide these disputes and, should Judge Westmore authorize additional discovery, for
5 that discovery to be completed;

6 WHEREAS, Plaintiffs have noticed the deposition of a BlackRock employee, Norbert
7 Schnadt, but desire to conduct that deposition with documents that, if they exist, may be produced
8 close to the discovery deadline, since BlackRock continues to diligently search for them, *id.* ¶ 6;

9 WHEREAS, absent relief from the December 21 fact discovery deadline, Plaintiffs may be
10 required to take this deposition without those potentially relevant documents, if they exist;

11 WHEREAS, a 45-day extension of the case schedule would ensure the production of all
12 outstanding documents in advance of the deposition of Mr. Schnadt;

13 WHEREAS, BlackRock will serve an amended privilege log after its document productions
14 are completed, and a 45-day extension would allow time for the parties to obtain resolution (either
15 informally or from Magistrate Judge Westmore) on any challenges Plaintiffs may have to specific
16 entries on BlackRock's privilege log, without addressing such challenges in a piecemeal fashion,
17 Russell Decl. ¶ 5;

18 **Progress of Discovery Between Plaintiffs and Mercer**

19 WHEREAS, Plaintiffs and Mercer had not engaged in any substantive discovery at the time
20 Mercer was added as a party in late August 2018, but have since worked diligently in their respective
21 discovery efforts, Russell Decl. ¶ 7;

22 WHEREAS, Plaintiffs and Mercer also have met-and-conferred multiple times concerning an
23 ESI protocol to govern Mercer's production of documents and other electronically stored data, and
24 they are nearing final agreement on this protocol, *id.* ¶ 8;

25 WHEREAS, Plaintiffs have issued, and Mercer has responded to, 11 requests for the
26 production of documents; 16 interrogatories; and 41 requests for admission, *id.*

27 WHEREAS, Mercer also has collected a significant amount of data and documents from
28 several Mercer custodians; has begun reviewing those materials to respond to Plaintiffs' document

1 requests; and it anticipates starting the production of documents in the very near future, *id.* ¶ 9;

2 WHEREAS, Plaintiffs and Mercer have held several additional meet-and-confers concerning
3 the parameters of Mercer's production, such as search terms, custodians, and the applicable date
4 ranges, as well as the scope of Plaintiffs' document requests, and although those discussions remain
5 ongoing and some disagreement remains, Plaintiffs and Mercer have been negotiating in good faith
6 and believe that, with additional time, they might reach a compromise and avoid an impasse that
7 would otherwise require motion practice before the Court, *id.* ¶ 10;

8 WHEREAS, Plaintiffs and Mercer also have discussed potential deposition dates for two
9 Mercer witnesses (one Rule 30(b)(1) individual deposition, and one Rule 30(b)(6) representative
10 deposition), but although they have neared agreement on potential dates, the fact that negotiations
11 over the scope of Plaintiffs' document requests and Mercer's production remain ongoing could result
12 in a scenario under which the Parties are forced to proceed with depositions in order to meet the
13 existing December 21, 2018 fact discovery deadline, but before resolving whether Plaintiffs have all
14 documents to which they believe they are entitled, *id.* ¶ 11;

15 WHEREAS, Plaintiffs have indicated their intent to hold the Mercer depositions open in the
16 event this occurs, and these circumstances could result in Mercer being required to present its
17 witnesses for deposition twice, should the Court find it must produce additional documents, *id.* ¶ 12;

18 WHEREAS, although Mercer continues to work diligently to review and produce the
19 categories of documents that it believes are appropriate for this case, the volume at issue will make it
20 difficult to produce even these documents sufficiently in advance of Mercer depositions before
21 December 21, 2018, *id.* ¶ 13; and

22 WHEREAS, Mercer and Plaintiffs believe the parties and the Court would benefit from
23 (1) avoiding potentially unnecessary discovery disputes for this Court to resolve, when they believe
24 in good faith that they may be able to resolve these issues if given the benefit of more time, and/or
25 (2) allowing the depositions of Mercer witnesses to occur after documents are fully produced to
26 avoid the risk that Mercer would be forced to present those witnesses for a second day of deposition;

27 **IT IS HEREBY STIPULATED AND AGREED**, subject to the approval of the Court that:

28 1. The Parties agree there is good cause for a modest extension of the existing case

1 schedule by forty-five (45) days, to allow all Parties sufficient time to complete fact discovery and
2 proceed with expert discovery related to class certification. Russell Decl. ¶ 14.

3 2. The Parties further agree that the period between the submission of opening expert
4 reports and the submission of rebuttal expert reports should be enlarged from 15 days to 30 days, but
5 that the period between the submission of rebuttal expert reports and the close of expert discovery
6 should be shortened from 30 days to 15 days, such that there is no overall change to the case
7 schedule apart from the deadline to submit rebuttal expert reports.

8 3. The Parties further agree that, should the Court grant an extension on the case
9 schedule, they will not issue any further written discovery requests on one another, except that
10 Mercer and Plaintiffs reserve their rights to issue written discovery requests on each other in the
11 event the facts adduced in discovery and not known to either of them as of the date of this
12 Stipulation indicate that doing so is necessary.

13 4. Plaintiffs will not seek to depose any current or former Blackrock employee other
14 than Mr. Schnadt or Ms. Fung, either as a percipient witness or as a corporate representative for a
15 BlackRock affiliate, prior to the class certification hearing. Plaintiffs will not seek to depose any
16 current or former Mercer employee or other Mercer witness other than Rashid Hassan, in his
17 individual capacity, and Mercer, under Rule 30(b)(6), prior to the class certification hearing. No
18 party will seek to depose any members of either putative class prior to the class certification hearing.

19 The Parties therefore stipulate and agree on the following case schedule:

Event	Existing Deadline	Stipulated Deadline
Close of Fact Discovery	December 21, 2018	February 4, 2019
Opening expert reports on class cert. issues	January 14, 2019	February 28, 2019
Rebuttal expert reports on class cert. issues	January 29, 2019	April 1, 2019
Close of expert discovery on class cert. issues	February 28, 2019	April 16, 2019
Motion for class certification	March 28, 2019	May 13, 2019
Opposition to class certification motion	April 26, 2019	June 10, 2019
Reply in support of class certification motion	May 14, 2019	June 28, 2019
Class Certification Hearing	June 6, 2019 at 2 p.m.	July 25, 2019 at 2 p.m.

1 Dated: December 7, 2018

2 **COHEN MILSTEIN SELLERS & TOLL,**
3 **PLLC**

4 /s/ Michelle C. Yau

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Attorneys for Mercer Investment Consulting

1 **ATTESTATION**

2 I attest that for all conformed signatures indicated by an “/s/,” the signatory has concurred in
3 the filing of this document.

4 Dated: December 7, 2018

By: /s/ Matthew A. Russell
Matthew A. Russell

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8 **~~PROPOSED~~ ORDER**

9
10 PURSUANT TO THE STIPULATION, IT IS SO ORDERED: the above Stipulation and
11 Proposed Order to Modify the Case Schedule is approved and all parties shall comply with its
12 provisions.

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14 Dated: 12/10/2018



15 U.S. District Court for the
16 Northern District of California
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